

**COURT OF APPEALS
DECISION
DATED AND FILED**

DECEMBER 23, 1997

**Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin**

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-1392

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**VIKING INSURANCE COMPANY OF WISCONSIN, AS
SUBROGEE OF SUSAN WOLF,**

PLAINTIFF-RESPONDENT,

V.

SALLY MINNIECHESKE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Shawano County:
THOMAS G. GROVER, Judge. *Affirmed.*

CANE, P.J. Sally Minniecheske appeals from a small claims judgment awarding \$1,688.69 plus costs to Viking Insurance as subrogee of Susan Wolf. Viking claimed that Minniecheske improperly turned into Wolf's lane of traffic while both cars were traveling in a westerly direction on a two-lane one-way street. In response, Minniecheske claimed that Wolf's car struck her vehicle when Minniecheske was turning into a driveway from the one-way street. She

also disputed the amount of damages Wolf claimed. The trial court believed Wolf's version of the accident, finding that Minniecheske was causally negligent and determined that the damages to Wolf's car totaled \$1,688.69.

Minniecheske argues the trial court erred by failing to grant her motion for a default judgment when Viking failed to appear at the initial appearance; by denying Donald Minniecheske's motion for a substitute judge; by refusing to allow Donald Minniecheske to interplead as a third party defendant; by failing to rule on her cross-claim; by concluding that her negligence caused the accident; and by concluding that the damages totaled \$1,688.69. The judgment is affirmed.

The trial court correctly denied Minniecheske's motion for a default judgment because Viking did not appear on the return date of the small claims summons. Section 799.20, STATS., provides that if the defendant appears on the return date, inquiry is made of the defendant to determine whether the defendant claims a defense to the action. There is no statutory requirement that the plaintiff appear on the return date. If the defendant claims a defense to the action, the matter is scheduled for trial. It appears that is what happened in this case and is the normal practice in small claims proceedings. There is no error.

Next, Minniecheske claims that the trial court erred by denying the motion to substitute. The trial court's basis for denying the motion was the fact that it was made by Donald Minniecheske who was not a party to the small claims action. Only the parties to the action are entitled to file a request for substitution of judge. Section 799.205, STATS. Donald Minniecheske was not a party to this small claims action.

Minniecheske also claims that the court erred by failing to allow Donald Minniecheske to interplead as a third-party defendant to protect the interest of the owner of the car. However, she cites no authority for this claim and does not develop the argument, other than a simple assertion. This court will not address undeveloped arguments. *State v. Gulrud*, 140 Wis.2d 721, 730, 412 N.W.2d 139, 142-43 (Ct. App. 1987).

Minniecheske's remaining arguments challenge the trial court's findings that she was causally negligent for the accident and that the damages to Wolf's car totaled \$1,688.69. Findings of fact shall not be set aside unless clearly erroneous. Section 805.17(2), STATS. It is for the trial court, not the appellate court, to resolve conflicts in the testimony. *See Fuller v. Riedel*, 159 Wis.2d 323, 332, 464 N.W.2d 97, 101 (Ct. App. 1990). It is not within the province of an appellate court to choose not to accept an inference drawn by a factfinder when the inference drawn is reasonable. *See Onalaska Elec. Heating, Inc. v. Schaller*, 94 Wis.2d 493, 501, 288 N.W.2d 829, 833 (1980). Appellate courts search the record for evidence to support the findings that the trial court made, not for findings that the trial court could have but did not make. *In re Estate of Becker*, 76 Wis.2d 336, 347, 251 N.W.2d 431, 435 (1977). The trial court is the arbiter of the credibility of witnesses, and its findings will not be overturned on appeal unless they are inherently or patently incredible, or in conflict with the uniform course of nature or with fully established or conceded facts. *Chapman v. State*, 69 Wis.2d 581, 583, 230 N.W.2d 824, 825 (1975).

Here, the trial court rejected Donald Minniecheske's version as to what happened at the accident. Instead, it found more credible the testimony of Susan Wolf who stated that Sally Minniecheske suddenly turned in front of her vehicle while they were traveling westbound on a one-way street with

Minniecheske in the right lane and Wolf in the left lane. Additionally, the trial court looked at the photographs of the damaged vehicles and concluded that Wolf's version of the accident was more consistent with the damage to the vehicles. The trial court also accepted the testimony of James Wick, an appraiser for Viking. Wick testified that he received estimates from Yach's Body Shop and Fenn's Repair Center which were consistent with his estimates for repair to Wolf's vehicle. Relying on this testimony, the trial court determined that a reasonable cost for replacing Wolf's car was \$1,688.69. Because those findings are not clearly erroneous, the judgment is affirmed.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

